

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

U.S. Department of Energy –  
Southwestern Power Administration

Docket No. NJ06-4-001

ORDER DENYING WAIVER, WITHOUT PREJUDICE, AND DENYING  
REHEARING

(Issued August 29, 2006)

1. This order addresses Southwestern Power Administration's (Southwestern) request for clarification of an order issued by the Commission on March 21, 2006 (March 21 Order).<sup>1</sup> This order also addresses and denies Southwestern's alternate requests to either temporarily waive the requirements of Order Nos. 2003<sup>2</sup> and 2006,<sup>3</sup> that otherwise would provide for the incorporation of the Large and Small Generator Interconnection Procedures and Agreements in Southwestern's Open Access Transmission Tariff (OATT), during the pendency of this proceeding, or grant rehearing of the March 21 Order.

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<sup>1</sup> *U.S. Department of Energy – Southwestern Power Administration*, 114 FERC ¶ 61,292 (2006).

<sup>2</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005).

<sup>3</sup> *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, at 31,406-31,551 (2005), *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005).

## **Background**

2. On January 25, 2006, Southwestern filed a petition for a declaratory order, requesting that the Commission find that Southwestern's OATT, with proposed revisions,<sup>4</sup> continued to be an acceptable reciprocity tariff pursuant to the provisions of Order No. 888.<sup>5</sup> Southwestern also acknowledged, however, that its filing did not incorporate the Large and Small Generator Interconnection Procedures and Agreements as set forth in Order Nos. 2003 and 2006. Southwestern stated that it intended to submit a further revised OATT containing these provisions at a later date.

3. The March 21 Order found that Southwestern's revised OATT substantially conforms with or is superior to Order No. 888's *pro forma* tariff. However, the Commission also stated that, "at this time, we cannot find that Southwestern has a valid 'safe harbor' reciprocity tariff until it achieves formal compliance with Order Nos. 2003 and 2006. Alternatively, Southwestern may request waiver of these Orders, providing sufficient explanation why Southwestern believes their inclusion is not warranted."<sup>6</sup>

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<sup>4</sup> Southwestern had proposed revisions in order to conform its OATT to the terms and conditions of an agreement dated March 31, 2005, between Southwestern and Southwest Power Pool, Inc.

<sup>5</sup> See *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

As stated in the March 21 Order, Southwestern is not a public utility subject to the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d, 824e (2000), but can file a reciprocity transmission tariff under Order No. 888's "safe harbor" provision and request a declaratory order on the basis that the tariff satisfies the Commission's comparability (non-discrimination) standards. If the Commission determines that the tariff contains terms and conditions that substantially conform with or are superior to those in the *pro forma* tariff, the tariff will be deemed to be an acceptable reciprocity tariff. Southwestern's OATT was previously determined to be an acceptable reciprocity tariff in *U.S. Department of Energy – Southwestern Power Administration*, Docket No. NJ98-2-000 (May 13, 1998) (unpublished letter order).

<sup>6</sup> March 21 Order at P 13.

Thus, the March 21 Order granted Southwestern's petition for a declaratory order but established a condition subsequent, requiring Southwestern to either file a revised OATT in compliance with Order Nos. 2003 and 2006 or obtain waiver of these Orders.

4. In the instant filing, Southwestern states that the March 21 Order is unclear because it could be interpreted in two ways; the order could be interpreted to find that: (1) the revised OATT requested in the petition for declaratory order will not become effective until Southwestern files a revised OATT containing the Large and Small Generator Interconnection Procedures and Agreements or obtains a waiver of such procedures from the Commission, or (2) the revised OATT submitted with the petition for declaratory order became effective on March 21, 2006, but that Southwestern is deprived of its "safe harbor" status until such time as a revised OATT is filed or a waiver is obtained. Southwestern asks the Commission to clarify that the March 21 Order should be interpreted under the first option. Alternatively, Southwestern requests either waiver of the Large and Small Generator Interconnection requirements of Orders No. 2003 and 2006 during this proceeding, or rehearing.

### **Discussion**

5. The March 21 Order granted Southwestern's petition for a declaratory order, finding that Southwestern's revised OATT, as of March 21, 2006, substantially conforms with or is superior to Order No. 888's *pro forma* tariff. However, the March 21 Order also noted that Southwestern had not revised the OATT to incorporate the Large and Small Generator Interconnection Procedures and Agreements, and that, until the time that Southwestern achieves formal compliance with Order Nos. 2003 and 2006 (or obtains waiver of these Orders), Southwestern does not have a valid "safe harbor" reciprocity tariff. Thus, the March 21 Order created a condition subsequent for Southwestern to fulfill, in order for its OATT to continue to have "safe harbor" status.

6. We next address and deny, without prejudice, Southwestern's request to waive the requirements of Orders Nos. 2003 and 2006 for incorporation of the Large and Small Generator Interconnection Procedures and Agreements, for the duration of this proceeding. We are not persuaded that this request for waiver satisfies the condition subsequent described in the March 21 Order, which required that Southwestern provide sufficient explanation as to why compliance with Order Nos. 2003 and 2006's requirements is not warranted. Southwestern has not provided a reason why it is unable to or need not comply with Order Nos. 2003 and 2006. Further, in any event, this request for clarification and rehearing is not the appropriate forum for Southwestern to request such waiver of the Order Nos. 2003 and 2006 requirements. If Southwestern does request such waiver, it must file a separate request and adequately support this request with a sufficient explanation why it believes compliance with Order Nos. 2003 and 2006's requirements is not warranted.

7. Finally, we deny rehearing of the March 21 Order. In Order No. 2003, the Commission stated that a non-public utility that has a safe harbor, reciprocity tariff may add to its tariff interconnection procedures and agreements that substantially conform with or are superior to the *pro forma* Large Generator Interconnection Procedures and Agreements, if it wishes to continue to qualify for “safe harbor” treatment.<sup>7</sup> Order No. 2006 did not modify the Commission's reciprocity policy as laid out in Order Nos. 888 and 2003.<sup>8</sup> Here, while it earlier committed to do so at a later date, Southwestern has not yet revised its OATT in this manner and thus its OATT does not continue to qualify for “safe harbor” treatment until its OATT is in compliance with Order Nos. 2003 and 2006 (or has obtained a waiver of these Orders’ requirements).

The Commission orders:

(A) Southwestern’s request for waiver of the requirements of Order Nos. 2003 and 2006 is hereby denied, without prejudice, as described in the body of the order.

(B) Southwestern’s request for rehearing is hereby denied, as described in the body of the order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>7</sup> See Order No. 2003-A at P 760 *et seq.*

<sup>8</sup> Order No. 2006 at P 536.